IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No.

DISTRICT OF COLUMBIA,

Petitioner,

v.

ELIZABETH C. PACE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

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DIVISION OF PRINTING—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF

Petition

To the Honorable, the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, the District of Columbia, respectfully shows and represents unto Your Honors that:

Statement of Matter Involved

Section 1 (a) of Article I of Title V of the District of Colum-

bia Revenue Act of 1937 [1] imposes a tax upon all real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof. Section 6 of Article I of said Title, as amended,[2] provides that returns of jointly held and other property not under the control of a personal representative shall be made within six months after the death of the decedent, and the tax on the transfer of such property is required to be paid within nine months after the date of the death of such decedent. Returns of other property are required to be made by the personal representative within fifteen months after the death of the decedent, and the tax on such transfers is required to be paid within eighteen months after the death of the decedent.

Charles F. Pace died a resident of the District of Columbia on March 20, 1940, leaving intangible personal property held jointly with the respondent, Elizabeth C. Pace, in the amount of approximately $44,000.00 (R. 21), real estate owned individually and located in Florida having a value of approximately $30,000.00 (R. 81-84), and intangible personal property owned individually having a value at the time of his death of approximately $279,000.00 (R. 85-94).

On November 20, 1940, Elizabeth C. Pace, the respondent and surviving sister of the decedent, filed with the Assessor, D. C., a return of the intangible personal property held jointly with the decedent (R. 19-22), and on December 20, 1940, paid to the Collector of Taxes, D. C., the tax assessed on the basis of such return (R. 23). On March 17, 1941, the respondent filed a petition with the Board of Tax Appeals for the District of Columbia alleging that the assessment was erroneous for the reason that the decedent was not domiciled in the District of Columbia at the time of his death, and praying that the amount of the taxes paid be refunded (R. 13-18). The Board

[1] 50 Stat. 683, rewritten and other sections amended in the Act approved July 26, 1939, 53 Stat. 1111, Section 47-1601, D. C. Code, 1940.
[2] 53 Stat. 1113, Section 47-1606, D. C. Code, 1940.

of Tax Appeals, following the decisions of the United States Court of Appeals for the District of Columbia in the *Sweeney*[3], *Murphy*[4], and *DeHart*[5] cases held "as a matter of law" that at the time of his death the decedent was not domiciled in the District of Columbia, and that respondent was entitled to a refund of the taxes paid (R. 27-35). The District of Columbia petitioned the Court of Appeals for a review of the Board's decision (R. 105-107). At the time the District's petition was filed with the Court of Appeals, the *DeHart* and *Murphy* cases were pending in this Court and the time for filing of briefs in the Court of Appeals was extended until after this Court's decision in such cases. Thereafter, upon motion of the District, this case was remanded to the Board of Tax Appeals for further proceedings in conformity with the opinion of this Court in the *DeHart*[6] and *Murphy*[7] cases. On rehearing the Board found as a fact that decedent did not have a fixed and definite intent to return and take up his home in Florida when he should have been separated from the Federal service; that the evidence adduced was not sufficient to overcome the presumption that the decedent was domiciled in the District where he maintained his only home; and that decedent was domiciled in the District of Columbia at the time of his death. The Board therefore held that respondent was not entitled to a refund of the inheritance taxes paid (R. 2-4). Respondent petitioned the Court of Appeals for review of the Board's decision (R. 5-8). The Court of Appeals reversed the decision of the Board of Tax Appeals and held that decedent was not domiciled in the District at the time of his death (R. 131-136).

Jurisdiction

The judgment of the United States Court of Appeals for the

[3] *Sweeney* v. *District of Columbia*, 72 App. D. C. 30, 113 F. (2d) 25.
[4] *District of Columbia* v. *Murphy*, 73 App. D. C. 317, 119 F. (2d) 451.
[5] *District of Columbia* v. *DeHart*, 73 App. D. C. 345, 119 F. (2d) 449.
[6] *District of Columbia* v. *DeHart*, 314 U. S. 441.
[7] *District of Columbia* v. *Murphy*, 314 U. S. 441.

District of Columbia was entered on April 12, 1943. The jurisdiction of this Court to issue the writ applied for is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

Questions Presented

1. Whether the Court of Appeals may substitute its judgment for that of the Board of Tax Appeals when the Board's findings are supported by substantial evidence.

2. Whether a person may have a state-wide domicile, or whether domicile must be fixed at a definite place.

3. Whether decedent, Charles F. Pace, was domiciled in the District of Columbia for purposes of inheritance taxation at the time of his death.

Reasons Relied on for the Allowance of the Writ

The Court of Appeals has not given proper effect to applicable decisions of this Court.

The questions here presented are of great importance to the District of Columbia and the several states and to all individuals residing therein.[3] The District of Columbia Income Tax Act levies a tax upon the income of individuals "domiciled" in the District and the District of Columbia Inheritance and Estate Tax Law levies a tax upon transfers from the estate of every individual who dies a resident of the District. The importance of the question is not limited to liability for payment of taxes, but extends to matters relating to the administration of estates, the granting of divorces, and the like.

WHEREFORE, Your petitioner prays the allowance of a writ of certiorari to the United States Court of Appeals for the District of Columbia in this cause, and entitled *Elizabeth C. Pace*

[3] This is particularly true in view of the decentralization of so many Federal departments.

Petitioner v. *District of Columbia, Respondent*, No. 8274; that said cause may be reviewed and determined by this Court, and that the judgment of the said Court of Appeals may be reversed and set aside; and for such further relief and remedy in the premises as this Court may deem meet and proper.

DISTRICT OF COLUMBIA,
Petitioner.

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Opinions Below

The opinion of the Board of Tax Appeals for the District of Columbia (R. 2-4) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 131-136) is not yet reported.

Jurisdiction

The grounds upon which the jurisdiction of this Court is invoked are stated in the petition.

Statement of the Case

The primary question presented in this case is the domicile of Charles F. Pace at the time of his death on March 20, 1940. Said decedent came to the District of Columbia in 1913 and continuously resided in said District until the date of his death.

Decedent had one brother and two sisters, all of whom were born in Jacksonville, Florida (R. 111). After the birth of decedent the family removed to Starke, Florida (R. 111). Decedent's brother came to the District of Columbia in 1889 (R. 125), and, except for a short time during which he was receiving education in Rome, he remained in the District until his death in 1938 (R. 124, 125). Both parents of the decedent had died prior to 1910, leaving all the family property to decedent (R. 121). At that time decedent and his two sisters were living at the family home in Starke (R. 120). Decedent's two sisters,

one of whom is the respondent herein, came to the District of Columbia in 1910 or 1911, the respondent, Elizabeth, to study music, and her sister, Mary, to be with her (R. 120). In 1913 the decedent sold the family home in Starke (R. 121), gave up his employment in a bank located in that town (R. 111), and came to the District of Columbia to accept a position in the Library of Congress (R. 111). The furnishings in the Florida home were stored in an office or warehouse which the decedent owned in Starke (R. 116, 121). No changes were made in the property so stored (R. 123), and upon the death of Charles F. Pace such property was appraised at no value (R. 92).

Upon coming to the District in 1913 the decedent took quarters with his two sisters in a boarding house and so resided until some time in 1914 (R. 121, 123). Thereafter, decedent and his two sisters resided in apartments in the District of Columbia, the first one being a furnished apartment and the later ones being furnished with furniture owned by the decedent and his two sisters (R. 123).

Besides the position in the Library of Congress to which he was appointed upon coming to the District, the decedent held positions in the Post Office of the Capitol and as a clerk in the Disbursing Office of the Senate (R. 112). In 1915 or 1916 he was made Financial Clerk of the Senate (R. 123), which position he retained until the time of his death (R. 112).

At the time of his death, decedent owned a number of parcels of real estate situated in Florida of the value of approximately $30,000.00 (R. 81-84). Some of these parcels were acquired by inheritance and others by purchase or foreclosure of mortgages either before or after coming to the District of Columbia (R. 116, 122). Such properties were managed by agents located in Florida and the rentals from such properties were deposited in local Florida banks by attorneys of the decedent (R. 123). The decedent owned at the time of his death the following intangible personal property: Notes secured by mortgages on Florida real estate in the approximate amount of $27,000.00 (R. 85-92); deposits in The Atlantic National Bank of Jack-

sonville, Florida, in the approximate amount of $8,400.00 (R. 92); stocks and bonds located in the District of Columbia in the approximate amount of $240,000.00 (R. 92, 93); and an account in the American Security and Trust Company, Washington, D. C., in the approximate amount of $189.00 (R. 93). In addition to the above-described property owned individually by the decedent, there was on deposit in banks and a building association in the District of Columbia more than $44,000.00 in the name of Charles F. Pace or Elizabeth C. Pace, or survivor (R. 21).

Decedent regularly paid his poll taxes and voted either in person or by absentee ballot in elections in the State of Florida (R. 112, 113). His sister, the respondent herein, did not vote in such elections (R. 112).

Five or six years prior to the death of the decedent he received, but declined to accept, an offer of a position in a bank in Florida which would have paid a higher salary than that which he was receiving as Financial Clerk of the Senate (R. 119-120, 125).

Decedent and the other members of his family were members of a church in the District of Columbia (R. 123-124).

Decedent had a substantial estate and was not dependent upon the salary which he received as Financial Clerk of the Senate (R. 124). He could have returned to Florida at any time he desired. The decedent, together with the other members of his family, remained and made his only home in the District from and after 1913. The decedent died in the District of Columbia (R. 103) and his remains, together with those of the brother and sister who predeceased him, are buried in a vault in the District of Columbia (R. 117). The decedent regularly filed returns of his intangible property with the Assessor of the District of Columbia and paid taxes thereon (R. 101.) The District of Columbia Income Tax Act imposes a tax upon the income of individuals domiciled in the District of Columbia (53 Stat. 1087). The decedent reported his income for the calendar year 1939 to the Assessor of the District of

Columbia and paid a tax thereon without protest (R. 101).

Miss Mary S. Pace, a sister of the decedent, died on January 15, 1938, while residing in the District of Columbia with said decedent and the respondent herein. A return of personal property held jointly by the two sisters was filed with the Assessor, District of Columbia, and an inheritance tax in the amount of $200.79 was paid on account of such jointly held property. All correspondence with the office of the Assessor regarding the tax was carried on by Charles F. Pace, and the tax was paid by said decedent voluntarily and without protest on February 15, 1938 (R. 101-102). The respondent, Elizabeth C. Pace, reported to the Assessor of the District of Columbia intangibles owned by her on July 1, 1938, and paid a tax thereon for the fiscal year ended June 30, 1939. Said respondent also reported her income for the calendar year 1939 and paid a tax thereon to the Collector of Taxes, District of Columbia, without protest, and no claim for refund thereof has been made (R. 102). Said respondent considers herself a resident of the District of Columbia (R. 117).

The last will and testament of Charles F. Pace, the decedent, states that he is "of the City of Washington, District of Columbia" (R. 74).

Specification of Errors

The United States Court of Appeals for the District of Columbia erred:

1. In substituting its judgment for that of the Board of Tax Appeals when the Board's findings were made in accordance with the principles of law announced by this Court and are supported by substantial evidence;

2. In holding, in effect, that a person may have a domicile within a state without fixing such domicile at a definite location therein;

3. In holding that the decedent, Charels F. Pace, was not domiciled in the District of Columbia for purposes of taxation on March 20, 1940.

Statutes Involved

Section 1, Article I, Title V, of the District of Columbia Revenue Act of 1937,[9] provides, in material part, as follows:

> "Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:
>
> "(a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death (1) the possession or enjoyment of, or the right to the income from such property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the * * * brothers and sisters of the whole or half blood of the decedent shall be subject to a tax as follows: 3 per centum of so much of said property as is in excess of $2,000 and not in excess of $25,000; 4 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 6 per centum of so much of

[9] See Note 1, page 2 hereof.

said property as is in excess of $50,000 and not in excess of $100,000; 8 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 10 per centum of so much of said property as is in excess of $500,000."

Section 2 of said Article and Title [10] provides as follows:

"The tax provided in section 1 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held."

Summary of Argument

The facts in this case clearly show that decedent was domiciled in the District of Columbia at the time of his death, and the Board of Tax Appeals so held. The Board's conclusion was reached by applying to the facts of this case the principles of law prescribed by this Court. The Board's finding is supported by substantial evidence and should not have been reversed by the Court of Appeals.

The primary principle of law applicable to this case is that "in order to retain his former domicile, one who comes to the District to enter Government service must always have a fixed and definite intent to return and take up his home there when separated from the service." The evidence in this case clearly shows that decedent had no fixed and definite intent to return and take up his home in the place of his former domicile, and the Board of Tax Appeals properly so held. This is the second case [11] since the decision of this Court in the Murphy and DeHart cases in which

[10] 53 Stat. 1112, Section 47-1602, D. C. Code, 1940.

[11] See *Beedy* v. *District of Columbia*, 75 App. D. C. 289, 126 F. (2d) 647.

the Court of Appeals has disregarded the findings of the Board with respect to intention to return to the place of former domicile. This practice of the Court of Appeals in substituting its own judgment for that of the fact-finding administrative agency is contrary to law, and should not be permitted to be continued.

The Court of Appeals apparently takes the view that although decedent had no fixed and definite intent to return to the place of his former domicile (Starke, Florida), an intention to return to some other place in the State of Florida is sufficient to retain domicile in that State. Domicile must be at a definite, particular place. Decedent here did not have a fixed and definite intent to return to any place within the State of Florida, but even if it could be said that he had an intention to return or remove to one of several towns within that State, that would not be sufficient to retain his former domicile. His former domicile was at Starke, Florida. To retain that domicile it must be clearly established that he had a fixed and definite intent to return to that place.

Argument

I

Decedent, Charles F. Pace, was domiciled in the District of Columbia at the time of his death on March 20, 1940.

In its opinion in *District of Columbia* v. *Murphy*, *supra*, this Court stated a number of the pertinent facts to be considered and announced certain principles of law to be applied to such facts in determining domicile. It is the view of the petitioner that the application of the legal principles announced in the *Murphy* case to the pertinent facts in this case clearly establishes that decedent was domiciled in the District of Columbia at the time of his death. Therefore, petitioner desires to discuss the facts in this case which are pertinent in the determination of the domicile of the decedent.

(a) Reasons for coming to the District of Columbia, and manner of living therein

Decedent, Charles F. Pace, was one of four children, all of whom were born in Jacksonville, Florida (R. 111). Some time after decedent's birth, the family moved to Starke, Florida (R. 111). In 1889 decedent's only brother left the family home and came to the District of Columbia where he remained (except for a short period when he was studying in Rome) until his death in 1938 (R. 125-126). Both the decedent's parents had died prior to 1910 (R. 120). At that time decedent was employed in a bank in Starke, and was living there in the family home with his two sisters, Elizabeth and Mary (R. 120). In 1910 or 1911 decedent's two sisters left the family home in Florida and came to the District of Columbia, where they resided continuously thereafter until the death of Mary in 1938, and where Elizabeth, the respondent herein, still continues to reside. In 1913, the decedent sold the family home in Florida and came to the District of Columbia to live with his two sisters, and he continued to reside in the District from 1913 until his death in 1940, during all of which period he had no home at any other place (R. 122).

Upon coming to the District, decedent and his two sisters lived for a short while in a boarding house. In 1914 they moved into a furnished apartment. Sometime thereafter, they moved to an apartment which was furnished with their own furniture (R. 123). At the time of Mary's death, they lived in a five-room apartment furnished with equipment which they owned (R. 123).

While the salary which decedent was to receive in the District of Columbia may have been a consideration, it appears that the primary reason for his coming to the District was to be with his sisters. The respondent testified that they had discussed his coming to Washington and "he thought it would be better for all of us to be together" (R. 111). However, they all could have been together in Florida as well as in the Dis-

trict. They had a "very beautiful" home in Starke (R. 120). Although decedent had a position in a bank there, he had a substantial estate and was not dependent upon his salary (R. 124). Apparently, he could have resided wherever he chose. The two sisters were not employed, and their residence likewise was a matter of choice.

(b) Relations to former place of abode

Decedent was registered and qualified to vote in Starke, Florida. He exercised this right either in person or by absentee ballot. Apparently, the only active part he took in any political campaigns in Florida subsequent to 1913 was in those of Senators Fletcher and Trammell (R. 113). He subscribed to both the Starke and Jacksonville papers. In 1939 he contributed $20.00 to the upkeep of Crosby Lake Cemetery, located in Starke (R. 57). The Court of Appeals refers to this cemetery as one "in which a family burial lot was located" (R. 133). The record, however, discloses that all of decedent's "dear ones" with the exception of one aunt, Mrs. Hoyt, are interred either in the District of Columbia or in Jacksonville, Florida (R. 59).[12] In his letter of August 26, 1939, forwarding the first of his donations to the cemetery, decedent says "as my aunt, Mrs. Hoyt, is buried there in our lot, I feel an interest in keeping up the burial ground" (R. 60) [13]. While the respondent testified that decedent made other contributions to organizations in Florida, no amounts are stated, and only the "woman's club" was mentioned (R. 115). The general testimony relating to decedent's interest in Florida affairs and contributions to Florida organizations, like the other testimony of the respondent, is, of course, self-serving, and subject to the infirmity of all such declarations. Decedent carried on

[12] The letter appearing on page 59 of the Record is reprinted at page 2a of the Appendix hereto.

[13] The letter appearing on page 60 of the Record is reprinted at page 3a of the Appendix hereto.

some correspondence with persons in Florida, the bulk of which apparently pertained to the property which he owned there.

At the time of his death, decedent owned a number of pieces of real property in Bradford, Clay, and Duval counties in Florida, valued at approximately $30,000.00, and notes secured by real property in Clay and Duval counties valued at approximately $28,000.00. This property was managed by decedent's agents or attorneys in Florida, and the rentals therefrom were deposited in The Atlantic National Bank of Jacksonville, Florida (R. 41, 92, 123). At the time of his death there was on deposit in such bank the sum of $8,416.79. A savings account which he formerly had in such bank was withdrawn about five years prior to his death (R. 41, 42). Much of the Florida real estate and all of that located in Bradford County was inherited by the decedent from his father (R. 121-122). Other property he acquired by foreclosure of mortgages (R. 122). He acquired no additional property in Bradford County, where his former home was located, after 1913, and at the time of his death he owned no mortgages on property located in that county (R. 121). He also owned some household goods and other personal effects which were stored in a warehouse in Starke. No additions were made to such property in storage after 1913 (R. 123) and at the time of decedent's death such property had no value (R. 92). In a letter which decedent wrote on December 5, 1939, to W. R. McQuaid, President of The Barnett National Bank of Jacksonville, Florida, decedent stated that the income from his Florida property was almost nothing, and with respect to the property at Starke, he says: "The property at Starke is old, and I pay more in repair bills, taxes, insurance, etc., than I get out of it. Can't sell it—just drag along from sentiment and force of habit" (R.45) [14].

It should be observed that although the property located in Florida was held in the name of the decedent, it was property

[14] The letter appearing on page 45 of the Record is reprinted at page 1a of the Appendix hereto.

which apparently belonged to the entire family. When decedent's father died, the family estate was not divided among the children but the entire estate was transferred to decendent (R. 122) apparently with the understanding that he should manage the property and share the proceeds with his sisters. He supported his sisters until his death.

Decedent had not been in the State of Florida for a number of years prior to his death (R. 42, 73). He was not a member of any club, lodge, church, or other organization in Florida. He was a member of a church in the District of Columbia (R. 123). Although this Court, in the *Murphy* case, specifically mentions relationship with churches as a relevant fact in the determination of domicile, the Court of Appeals held that no weight or significance as affecting domicile should be attached to decedent's church membership (R. 133). The Court attempts to avoid the responsibility for its holding by saying that counsel for respondent expressly agreed that no weight should be attached to church membership in the District. Counsel for respondent abandoned argument on this point only after the presiding judge had announced the view that no significance should be attached to the fact of church membership in the District of Columbia.

The Court of Appeals says that decedent corresponded with citizens of Starke, discussed their problems, and assisted in solving them (R. 133). The record discloses, however, that the purpose of his correspondence with persons in Florida was to solve his own problems. Except for his contribution to the cemetery, there is no evidence of his having assisted in solving the problems of anyone in Starke. Likewise, his subscribing to the Starke and Jacksonville papers is explained by the fact that he desired to keep in touch with his investments in those localities.

(c) Property and investments

The real property located in Florida and the notes secured

by Florida real estate which decedent owned are referred to in the preceding section of this brief. As previously pointed out, all the property in Bradford County wherein is located the place of decedent's former domicile, Starke, was inherited by decedent, and he had purchased no property in that county. Apparently, decedent desired and had tried to dispose of the property which he owned in Starke, but was unable to find a purchaser (R. 45).

Decedent owned at the time of his death intangible assets consisting of United States Treasury Bonds, Federal Land Bank Bonds, and stocks valued in excess of $240,000.00 (R. 92, 93), the certificates for which were held in the District of Columbia. In the account with The Atlantic National Bank of Jacksonville where rentals from his Florida property were deposited by his agents he had on deposit $8,416.79 (R. 92), and in the American Security and Trust Company in the District he had on deposit $189.32 (R. 93). The Court of Appeals emphasizes the disparity between these two accounts by stating that he had "a substantial sum on deposit in an active bank account in Florida, namely, $8,416.79, while in a bank in the District he had a deposit of $189.32" (R. 133), and then by stating that "the vast preponderance of his bank deposits were situated in Florida" (R. 135 and 136). The Court omits any reference to the fact that at the time of his death there was on deposit in the American Security and Trust Company and the Perpetual Building Association in the District in the joint names of the decedent and respondent amounts totaling $44,343.64 (R. 21). It is the tax upon decedent's interest in these joint accounts which is involved in this proceeding. Decedent also owned cash located in the District in the amount of $1,117.34 (R. 93) and an interest in the furniture and personal effects located in the apartment occupied by decedent and respondent.

(d) Payment of taxes

The District of Columbia Income Tax Act is applicable to the taxable year 1939 and subsequent taxable years. It imposes a tax upon the income of individuals domiciled in the District of Columbia on the last day of the taxable year. The decedent reported to the Assessor, D. C., his income for the calendar year 1939, and paid a tax thereon in the amount of $150.73. Such tax was paid voluntarily and no claim was made that deeedent was not domiciled in the District of Columbia on December 31, 1939 (R. 101). The Court of Appeals says that the circumstances under which he paid the District income tax lend little weight to District domicile for the reason that he had been advised by a bank official that any one receiving his salary in the District was subject to the income tax (R. 136). In brushing aside the significant fact of payment of District income taxes, the Court of Appeals overlooks two pertinent considerations. Decedent was a lawyer (R. 72) and was certainly better qualified to interpret the District Act and the term "domicile" than a layman. The advice of the bank official (R. 119) to the effect that anyone receiving his salary in the District was subject to the tax was so obviously erroneous that no one who had ever been near a law school would have been gulled by it. Secondly, Mr. Pace was employed by the Senate and was well acquainted with most, if not all, of the members of that body. It is only reasonable to believe that his connection there provided him with some knowledge of the legislative history and interpretation of the Act. If he had no such knowledge and desired an interpretation of the Act, he certainly would have inquired of some of his friends at the Capitol. It may be that decedent had some conversation with this bank official, but it is inconceivable that he relied entirely upon such advice in filing his District return and paying a tax upon his income. It might be observed, further, that the language of the District Income Tax

Act and its interpretation was widely publicized in the local papers prior to the time decedent's 1939 return was filed.

Decedent paid taxes to the District of Columbia upon his intangible personal property for the years 1937, 1938, and 1939 in the amounts of $98.54, $217.54, and $182.26, respectively (R. 101). The Court of Appeals recites this fact but apparently attaches no significance to it. These taxes also were paid voluntarily, and without any question being raised as to decedent's liability therefor. The laws of Florida, in effect during such years and for many years prior thereto, levied taxes upon the intangibles of residents of that State [15]. There is no evidence that decedent ever paid any taxes to the State of Florida upon his intangibles. If any such payments had been made, they certainly would have been referred to in the affidavit of the Tax Collector of Bradford County, which was introduced in evidence (R. 55). It is significant that the decedent could have avoided payment of the District tax upon his intangibles by submitting to the Assessor evidence that he had paid taxes upon such personal property to another jurisdiction.[16]

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[15] It appears that laws of the State of Florida have imposed taxes upon intangible personal property at least since 1895. Section 1, of Chapter 4322, of the Acts of 1895, imposed taxes upon all property, real and personal, in the State. Section 3 of said chapter defined the term "personal property" to include "all goods and chattels, moneys and effects, all boats and vessels, whether at home or abroad, all debts due or to become due, from solvent debtors, whether on account, contract, note or otherwise, on public stocks or shares in all incorporated or unincorporated companies."

Chapter 15789, General Laws of the State of Florida, 1931, further defined and classified intangible personal property for purposes of taxation. This Act divided the intangible personal property subject to taxation into three classifications: (A) all stocks or shares of incorporated or unincorporated companies, all bonds (except Federal, State, and municipal); (B) all notes, bonds, and other obligations for the payment of money which are secured by mortgage, deed of trust, or other leases or liens upon real or personal estates situated in Florida; (C) all other intangible personal property. The rate of taxation of intangible personal property in the first two classifications was two mills on the dollar of taxable value, while the rate on property in class (C) was one-tenth of a mill.

[16] The Act of July 3, 1926, 44 Stat. 833, Section 47-1205, D. C. Code, 1940, provides that no intangible tax shall be imposed upon property if the owner thereof submits evidence to the Assessor, D. C., satisfactory to him that such intangible personal property or the income thereof is taxed in said personal property or the income thereof is taxed in some other jurisdiction.

The decedent's sister, Elizabeth, the respondent here, also reported to the Assessor, D. C., her income for the calendar year 1939, and paid a tax thereon in the amount of $22.50 (R. 102). This payment was made voluntarily, and no claim was made of domicile without the District of Columbia. Since the decedent managed the financial affairs of his sisters, it is a reasonable inference that this tax was paid on the advice of the decedent, who considered his sister to be domiciled within the District of Columbia on December 31, 1939. Elizabeth also voluntarily paid taxes to the District of Columbia upon intangible personal property for the fiscal year 1939 (R. 102). The opinion of the Court of Appeals omits any mention of the payments of these taxes.

The decedent's sister, Mary, died on January 15, 1938, while residing in the District of Columbia with her brother, Charles, and sister, Elizabeth. A return of property held jointly by the two sisters was filed with the Assessor, D. C., and an inheritance tax in the amount of $200.79 was paid on account of the transfer of Mary's interest in such jointly held property. All the correspondence with the office of the Assessor regarding this tax was carried on by the decedent, and the tax was paid by said decedent voluntarily and without protest (R. 101, 102). Obviously, the decedent considered Mary to have been domiciled in the District at the time of her death. The Court of Appeals likewise omits any reference to this fact.

(c) Transmission of will to Florida

The will of the decedent was filed with the Register of Wills of the District of Columbia. Upon petition of the respondent herein, the District Court ordered the will transmitted to the Clerk of the County Court for Bradford County, Starke, Florida (R. 64, 65). The Court of Appeals takes the view that this amounts to a determination by the District Court that decedent was domiciled in Florida.

At the time the petition of the respondent to transmit the will of the decedent to Florida was filed, it was the practice of the District Court to grant such petitions upon the statements contained therein, and without notification to the District.[17]

In the first place, the District Court could not have made a determination that decedent was domiciled in Florida for the reason that it did not have before it, and consequently did not consider, the facts necessary for such a determination. Secondly, the District received no notice of the petition to transmit the will; it was not a party to such proceeding, and certainly cannot be bound by any decision therein.

(f) Statements respecting domicile and intention to return to place of former abode

The last will and testament of the decedent began "I, Charles F. Pace, of the City of Washington, District of Columbia," Although it is generally held that a recital in a will as to the domicile of the testator is evidence of his domicile at that time, and even of his domicile at the time of his death where his death soon followed,[18] the Court of Appeals attaches no significance to the fact.

In addition to the two letters written by decedent to Mrs. Vida V. Morgan at the time he made donations to the Crosby Lake Cemetery (R. 59, 60), there was also introduced in evidence five other letters written by or to the decedent prior to his death. Two of these letters were written by decendent (R. 45, 69)[19] to W. R. McQuaid, President of The Barnett

[17] This practice has since been changed, and petitioners are now required to obtain the consent of District authorities or give the District an opportunity to contest the claim of domicile without the District before a will is transmitted to another jurisdiction.

[18] 1 *Beale, Conflict of Laws*, Paragraph 41B9; *Kennan on Residence and Domicile*, Paragraph 87. Dr. Kennan states (page 179): "Certainly there are few if any written declarations which can raise stronger presumptions as to the testator's purpose and intention." In *Ward* v. *Oxford* (1829), 8 Pick (Mass.) 476, Justice Baker observed: "The designation of his residence in a solemn instrument such as a deed or a will, is in the nature of a fact rather than a declaration, being made when there is no controversy, and where no possible interest could exist to give a false designation."

[19] Letters appearing on pages 45 and 69 of the Record are reprinted on pages 1a and 4a, respectively, of the Appendix hereto.

National Bank of Jacksonville, Florida, and three (R. 66, 71, 74) were written by McQuaid to the decedent. This correspondence was introduced for the purpose of showing that decedent had made a statement in his letter of December 5, 1939 (R. 45) that he was a *citizen* of Florida. An affidavit of the said McQuaid was introduced in evidence in which it is stated that the declaration of citizenship was made by the decedent "freely and voluntarily and not on the advice of, or at the request of, affiant" (R. 43). The record, however, discloses that the statement regarding citizenship was inspired by Banker McQuaid, who considered the decedent to be domiciled in the District of Columbia, and was trying to induce decedent to change his domicile to Florida so as to avoid District inheritance taxes and to give McQuaid's bank the business of handling decedent's estate. In McQuaid's first letter of November 27, 1939 (R. 66, 67), he refers to prior correspondence in which he suggested the inability of decedent's sister to manage the estate in the event decedent should predecease her, and proposed that decedent come to Florida and discuss with McQuaid the matter of creating a trust for her. Although decedent made no response to McQuaid's suggestion in his reply of November 29, 1939 (R. 69), McQuaid, in his letter of December 2, 1939 (R. 71, 72, 73) again raised the question. In this letter, McQuaid states:

> "Of course, you could provide for a trust, having the Barnett National Bank act as trustee for your sister without the bank being named as executor. I presume you are now a resident of the District of Columbia and are filing your income tax returns there. I notice the District of Columbia has an inheritance tax, and on an estate of approximately $300,000 this would amount to about $20,000; whereas this amount would be saved if you establish your residence in Florida. This should not be difficult as you own so much property in Florida and I presume the District of Columbia is more lenient than are the states in per-

mitting employees of the Government who reside all the time in the District to maintain their residence in the state from which they came, by filing income tax returns and voting in these states. Of course, if you did not wish to make Florida your residence by going to the trouble of coming down here to vote in the general elections, and wish to retain your residence in the District and be subject to the inheritance tax, you could, as I suggested to you in 1938, make me a co-executor so that I, as executor, could handle your estate as a resident of the District of Columbia. All compensation, however, to go to the Barnett National Bank and to be so provided in your will. You have probably considered all these things and determined just what you want to do. Since you raised the question with me once, I am taking the liberty of again making these suggestions to you.

"Why don't you follow my suggestion and come down and discuss this with us, and at the same time go into the question of your property holdings, both here and at Starke, which you have not seen for a number of years? * * *"

In his reply of December 5, 1939 (R. 45), decedent states "I am a citizen of Florida and vote there regularly. My voting place is Starke but have paid my income tax at Baltimore where many Federal employees here pay. Will change to Jacksonville as you suggest." It is interesting to note that decedent merely claimed *citizenship* in Florida. He was a lawyer and must be presumed to have known the difference between citizenship and domicile, yet nowhere in this record is there any evidence that he ever claimed a "domicile" in Florida. It is also interesting to note that although he told McQuaid that he would file his Federal income tax returns in Jacksonville, his last return, filed in 1940, was filed with the Collector of Internal Revenue at Baltimore, Maryland (R. 119). The only inference to be drawn from this fact is that he had decided not to follow McQuaid's advice, and not to attempt to change his domicile to Florida.

The other statements regarding decedent's domicile and intention to return to Florida are: (1) that of Harold C. Wall, insurance agent in Starke, Florida, who stated in an affidavit (R. 40, 41) that he had received a letter from decedent several years prior to his death in which decedent stated that when he retired from his position with the Senate he would return to his home in Starke, Florida; (2) that of William E. Schooley, Assistant Vice President of the American Security and Trust Company; that at the time of the conversation with decedent regarding his liability for payment of District of Columbia income taxes, decedent said that he claimed his legal residence in Florida (R. 119); and (3) the testimony of respondent that decedent did not buy a home in the District for the reason that he intended to return to Florida when his service with the Senate was terminated (R. 114, 115). While decedent had a sentimental attachment for the State of Florida, he never claimed "domicile" in that state. The statement of Mr. Wall that decedent said he would return to Starke to live is negatived by the testimony of respondent that he said he would go to either St. Augustine, Jacksonville, or Starke. The statements of the respondent regarding the decedent's intention to return to Florida are self-serving, and entitled to little, if any, weight. Furthermore, all of these alleged statements regarding decedent's domicile in Florida are inconsistent with his acts.

(g) Domicile in the District of Columbia

The entire record in this case shows that decedent considered himself, as well as the other members of his family, to be domiciled in the District of Columbia, and made no effort to retain his domicile in Florida. Although the opportunity was presented on numerous occasions, he never claimed domicile in Florida, although it would have been to his advantage to do so. He paid his income and intangible taxes

to the District, although he could have escaped the income tax entirely and could have been relieved of the intangible tax by payment of less than half as much taxes on his intangibles in Florida. He paid inheritance taxes to the District upon the transfer of his sister Mary's estate because he considered her domiciled in the District, although such taxes could have been avoided if she had been domiciled in Florida. No act of the decedent indicates that he ever intended or desired to retain his Florida domicile. No claim was ever made that the decedent or his brother or either of his sisters was domiciled without the District until after his death, when the respondent realized that payment of a substantial amount of inheritance taxes could be avoided if domicile could be established in Florida instead of the District.

Decedent came to the District to be with his sisters and his brother, all of whom had previously come to reside in the District. He maintained his only home in the District for the twenty-seven years preceding his death. He refused to return to Florida when a position was offered him there paying a higher salary than the one he was receiving in the District (R. 125). He had a substantial estate and was not dependent upon his salary earned in the District. Although he could have returned at any time he elected to remain in the District until the end.

The decedent and his brother and sister who predeceased him are interred in a vault in the District. Although the respondent testified that she intended to remove the three bodies to the family lot in Jacksonville, the decedent never expressed any wish to be buried in Florida, and apparently considered the burial places of his brother and sister in the District to be permanent. In his letter of September 16, 1939, to Mrs. Morgan, he said that he had little interest in the cemetery at Starke for the reason that all of his dear ones were interred in the District of Columbia or in Jacksonville (R. 594). In that solemn instrument, his last will and testament, he

stated that he was "of the City of Washington, District of Columbia."

Even if we should disregard all of the evidence favorable to District domicile and consider the evidence submitted by the respondent in its most favorable light, decedent was still domiciled in the District of Columbia. The controlling principle which this Court announced in the *Murphy* case, and which the Court of Appeals completely ignores, is whether decedent had a fixed and definite intent to return and make his home at the place where he was formerly domiciled, namely, Starke, Florida. Respondent does not even contend that he intended to return and make his home either at the place, or within the same county, where his former domicile is located. He had no fixed intent to return to any particular place in Florida, but apparently had considered the possibility of living in one of three towns located in that State. A general intention to return to some locality within the State of former abode is not sufficient to meet the test laid down by this Court.

II

The Court of Appeals erred in substituting its judgment for that of the Board of Tax Appeals when the Board's findings were made in accordance with the principles of law announced by this Court and are supported by substantial evidence.

The question of whether decedent was domiciled in the District at the time of his death is a question of fact to be determined by the Board of Tax Appeals—of course, by the application of the proper legal principles.[20] This Court clearly so

[20] The ascertainment of a domicile of choice has been variously described as a "*conclusion* or *inference* the law derives from the fact of a man fixing voluntarily his sole or chief residence in a particular place, with the intention of continuing to reside for an unlimited time" (Lord Chancellor Westbury in *Udny* v. *Udny* (1869), L. R. 1 *Scotch & Divorce*, 441, 458); "a legal conclusion drawn from a series or network of facts"; "a shorthand method of expressing a number of legal consequences which result from certain facts" (Professor Fowler V. Harper, 19 *Pennsylvania Bar Association Quarterly*, 213.

held in the case of *District of Columbia* v. *Murphy*.[21] The Board of Tax Appeals found that the decedent was domiciled in the District at the time of his death. In reaching such conclusion the Board properly applied the legal principles an-

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Note [20]—Continued.

216) It has nearly always been held, however, by the better considered cases that the solution of a domicile of choice, as distinguished from one fixed by law, is, as says Dr. Farnsworth, "a pure question of fact—just as residence—to be determined, of course, by the application of proper legal principles" (*Farnsworth, The Residence and Domicil of Corporations*, page 42); "In other words 'domicil' is a legal concept while 'home' is a factual one from which the legal is in greater or less measure derived" (Kuhn, *Comparative Commentaries on Private International Law or Conflict of Laws*, page 67); "'Home' is not a term of art. It is a fact." (Mr. Surrogate Fowler in *Matter of Rutherford*, 88 Misc. 414, 417); "If therefore the question of acquisition in fact of a domicil of choice has been left to a jury, and there is sufficient evidence to support the verdict reached, and the court refuses a new trial, a higher court cannot (should not?) reverse the action of the trial court", says Professor Beale, Paragraph 15.1. See also, *Matter of Martin*, 255 N. Y. 359, affirming 229 App. Div. 772 and 136 Misc. 51; *New York Life Insurance & Trust Company* v. *Viele* (1899), 161 N. Y. 11, 19; *Bassett* v. *Wheeler* (1881), 84 N. Y. 466, 467; *Matter of Trowbridge* (1935), 266 N. Y. 283, 194 N. E. 756; *Commonwealth* v. *Davis*, 284 Mass. 41, 187 N. E. 33. Judge Vann, in *Matter of Newcomb*, 192 N. Y. 238, 250, remarked in the year 1908 as to domicile: "The question is one of fact rather than law, and it frequently depends upon a variety of circumstances, which differ as widely as the peculiarities of individuals."

Two recent cases from the English, and one from the Irish court of last resort, have passed squarely upon the subject, when the factual findings were made only by administrative officials and not by judges or juries after a full trial at law. See: *Inland Revenue Commissioners* v. *Lysaght* (1928) A. C. 234, 246 (House of Lords); *Levene* v. *Inland Revenue Commissioners* (1928) A. C. 217; and *Iveagh* v. *Revenue Commissioners* and *Revenue Commissioners* v. *Iveagh* (1930), Irish Reports 431. The two English cases held that the determination of "residence" for purposes of taxation was a question of fact, to be determined by administrative officials and cannot be reviewed unless it is made out to be based on some error of law. Although the question of taxing residence examined in the two English cases was somewhat less than domicile, still, the method of investigation of the subject was the same, namely, days in England, clubs, friends, property, bank accounts, abodes, etc. That is to say, the term "residence", for tax purposes, may contain many of the elements of the term "domicile".

The Irish case held that domicile for purposes of taxation was a question of fact. The Commissioners, in the *Iveagh* case, like the Board of Tax Appeals in the *Murphy* and *DeHart* cases, had based their determination of fact upon an erroneous view of the law. Mr. Chief Justice Kennedy made practically the same disposition of the *Iveagh* appeal as this Court did of the *DeHart* and *Murphy* appeals by remanding the case to the administrative officials for fact-finding under the law as expressed in the court of last resort.

[21] 314 U. S. 441.

nounced by this Court in the *Murphy* case. Nowhere in its opinion does the Court of Appeals even suggest that the Board failed to apply the proper legal principles in arriving at its conclusion of domicile. Nor does the Court say that the Board's findings are not supported by substantial evidence. The Court merely says that domicile is a compound of fact and law, that therefore it may consider the question, and it proceeds to substitute its judgment for that of the Board of Tax Appeals.

This is the second case which the Court of Appeals has decided since the decision of this Court in the *Murphy* case, in which it has disregarded the Board's findings and made its own determination of the facts of intention and domicile. The case of *Beedy* v. *District of Columbia*[22] involved the domicile of a former member of Congress who had retired from that body on January 1, 1935. In the Fall of that year he returned to the District and commenced the practice of law therein. He continued to engage in the practice of law and reside in the District, and was so engaged and so residing during the calendar year 1939, for which year he paid a tax to the District on his income. He petitioned the Board of Tax Appeals for refund of the tax so paid, claiming that he was not domiciled in the District of Columbia on December 31, 1939. The Board held him to be domiciled in the District, and denied his claim for refund. While the Court of Appeals did not say that the Board had failed to apply the proper principles of law, or that the Board's findings were not supported by substantial evidence, it substituted its own finding of domicile for that of the Board, and in that case, just as it did in the instant case, the Court disregarded the legal principles announced by this Court in the *Murphy* case. In its decision in this and the *Beedy* case, the Court of Appeals not only gives great weight to the self-serving declarations of the litigants, and adheres to its decision in the

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[22] 75 App. D. C. 289, 126 F. (2d) 647.

Sweeney case,[23] but it has usurped the function of the Board of Tax Appeals.[24]

If the question of decedent's domicile at the time of his death had been left to a jury, as it might have been if the case had been tried in the District or Municipal Court instead of before the Board of Tax Appeals, and there was sufficient evidence to support the verdict reached, the Court of Appeals could not have, or, at least, should not have reversed the action of the trial Court.[25] The Act creating the Board of Tax Appeals for the District of Columbia provides that "The findings of fact by the Board shall have the same effect as a finding of fact by an equity court or a verdict of a jury".[26] It is the function of the Board of Tax Appeals to draw inferences, to weigh the evidence, and to declare the results.[27] The Court of Appeals is without power on review of proceedings of the Board to make any findings of fact. The function of the Court is to decide whether the correct rule of law was applied to the facts found, and whether there was substantial evidence to support the findings made.[28] The Court may not substitute its judgment of the facts for that of the Board.[29]

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[23] The opinion of the Court of Appeals in the case of *Sweeney* v. *District of Columbia*, 72 App. D. C. 30, 113 F. (2d) 25, was overruled by the decision of this Court in the *Murphy* case.

[24] In substituting its judgment regarding the conclusion of domicile for that of the Board, the Court disregards the Board's finding that decedent had no fixed and definite intent to return and take up his home at the place of his former abode. The Court could not properly hold that the Board's finding regarding intent was not supported by substantial evidence, and the Court could not properly hold that decedent had retained his former domicile when the facts showed that he had no fixed and definite intent to return and take up his home there.

[25] *Beale, Conflict of Laws*, Paragraph 15.1.

[26] 52 Stat. 371, Section 47-2404, D. C. Code, 1940.

[27] *Helvering* v. *Nat. Grocery Co.*, 304 U. S. 282; *Helvering* v. *Kehoe*, 309 U. S. 277.

[28] *Helvering* v. *Kehoe*, 309 U. S. 277;
Elmhurst Cemetery Co. v. *Commissioner*, 300 U. S. 37;
Helvering v. *Rankin*, 295 U. S. 123.

[29] See Note 27 and Note 28, above.

III

The Court of Appeals erred in holding, in effect, that a person may have a domicile within a State without fixing such domicile at a particular place therein.

The record in this case clearly shows that decedent had no fixed and definite intent to return and take up his home at Starke, Florida, the place where he was formerly domiciled. The evidence respecting the place where decedent would live if he should remove to Florida was that he would live at either St. Augustine, Jacksonville, or Starke (R. 114). In holding decedent domiciled in Florida, the Court of Appeals held, at least in effect, that a person may be domiciled within a State without fixing such domicile at any particular place therein. It is the view of the petitioner that such holding is contrary to the ordinary conception of domicile in this country, and the rule laid down by this Court in the *Murphy* case. After stating the rule that a man does not acquire a domicile in the District simply by coming here to live for an indefinite period of time while in Government service, this Court says: [30]

> "On the other hand, we hold that persons are domiciled here who live here and have no fixed and definite intent to return and make their homes where they were formerly domiciled."

In view of the further language of the opinion, and the Court's adoption of Professor Beale's view that the search for the domicile of a person capable of acquiring a domicile of choice is but a search for his "home", it seems plain that this Court intended that in order to escape District domicile a person must have a fixed and definite intent to return to the

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[30] 311 U. S. 454-455.

"home", or at least the same town, where he was formerly domiciled. The weight of authority in this country supports this rule.

Dr. Kennan in his work on *Residence and Domicile* [31] says that

> "in this country the ordinary conception of domicile is residence in a *definite, particular, place* with intent to remain there."

The following also appears in Paragraph 104 of Dr. Kennan's work:

> "But can one have a domicile within a state without having it in some particular place in the state? The weight of authority in this country and under our conditions would seem to negative the proposition and there would seem to be no hardship in requiring proof of domicile in a *state* to include a fixed abode somewhere in that state.
>
> "In the words of Chief Justice Parker: 'An inhabitant, by our constitution and laws, is one who being a citizen dwells or has his home *in some particular town*, where he has municipal rights or duties, and is subject to particular burdens.'" [32]

Conclusion

In view of the foregoing, it is respectfully submitted that the United States Court of Appeals for the District of Columbia in its decision in this case has not given proper effect to applicable decisions of this Court, that a writ of certiorari should

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[31] Paragraph 104, page 217.

[32] *Harvard College v. Gore* (1827), 5 Pick. (Mass.) 370. See other cases cited by Kennan in Note 71, page 218.

be granted, and this Court should review the decision of said Court and finally reverse said decision.

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Reprint of letter appearing at page 60 of the Record from Charles F. Pace to Mrs. Vida V. Morgan, dated August 26, 1939 ..... 3a

Reprint of letter appearing at pages 69-70 of the Record from Charles F. Pace to William R. McQuaid, dated November 29, 1939 ..... 4a

COPY of letter appearing at pages 45-46 of the Record.

1851 Columbia Road,
Washington, D. C.
December 5, 1939.

Dear Will:

I thank you for your fine letter of the 2nd. You were indeed kind to explain everything to me.

I am a citizen of Florida and vote there regularly. My voting place is Starke, but have paid my income tax at Baltimore where many Federal employees here pay. Will change to Jacksonville as you suggest. My income is not large. If it were not for my salary would have to pay very little as my Florida income is almost nothing. Have a few fine mortgages in Jacksonville. The property at Starke is old and I pay more in repair bills, taxes, insurance, etc. than I get out of it. Can't sell it—just drag along from sentiment and force of habit. This is the second busiest month of the year with me. We have two big pay days before Christmas and it is rush all the time to get people satisfied. It is also settlement time for us on our accounts, therefore it will be out of the question for me to go to Jacksonville as much as I would like to. Will consider all your fine advice and reply further to you.

Thanking you again, I am

Sincerely,

s/ CHARLES F. PACE.

P. S.—Intended to reply fully to your letter but am so rushed with work. This job is almost like a term in prison—no vacation—all work.

Senator Ashurst told me yesterday he considered it the most terrible job in the Federal service. He said he would not have it for $30,000 a year.

COPY of letter appearing at page 59 of the Record.

Washington, D. C.
September 16, 1939.

Dear Mrs. Morgan:

I regret to see by The Telegraph that the funds required for the safeguarding of dear old Crosby Lake Cemetery are so slow in coming to the fine ladies who have undertaken this good work without any hope of reward for themselves other than the approval of conscience.

So many of my friends of youthful days are buried there, men and women of pure and upright character, and many of them with great mental ability, that I am impelled to add to my former contribution with this proviso: please do not let my name be published again in the paper for I have no desire whatever for display. Just let it be "from a previous contributor."

All of my dear ones, with the exception of my aunt, Mrs. Hoyt, are interred here or at Jacksonville, and I have little personal interest beyond that of paying a just tribute to the memory of the splendid men and women whom I knew and loved in my boyhood.

Yours sincerely,

/s/ CHARLES F. PACE.

(Written in left margin:)

At one time I owned all of Crosby Lake Cemetery except the lots then conveyed. I inherited it from my father and sold it for almost nothing.

COPY of letter appearing at page 60 of the Record:

Washington, D. C.
August 26, 1939.

Dear Mrs. Morgan:

I have read in the Telegraph of the need for funds for the Crosby Lake Cemetery.

As my aunt, Mrs. Hoyt, is buried there in our lot, I feel an interest in keeping up the burial ground. It is one of the sacred duties of the living to remember with respect and love those who have preceded us. Please hand the enclosed check to Miss Annie Ray, or whoever is the custodian of the funds, to be expended for this good purpose.

With kindest regards, I am

Sincerely yours,
/s/ CHARLES F. PACE.

(Envelope of the United States Senate addressed to
Mrs. Vida V. Morgan,
Starke, Florida.
Postmarked August 27, 1939, 7 P. M.)

COPY of letter appearing at pages 69-70 of the Record.

1851 Columbia Road,
Washington, D. C.,
November 29, 1939.

Mr. William R. McQuaid,
Jacksonville, Fla.

Dear Will:

Many thanks for your kind letter of good advice about the bonds.

I know The Riggs National people very well for there has not been a business day in seventy-five years that has failed to show business, sometimes very large business, between that bank and the disbursing office of the Senate.

I had quite a good personal balance there but withdrew it to send to your bank some years ago. I later drew out that money and put it with some more into the bonds now under discussion.

One of the Vice Presidents of the bank became angy about my closing the a/c and without any just cause for it was my money to do with as it seemed best to me.

I like all the officers except this V. P. but have never been inside of the bank since.

Never have been known to return to any place where insults have been heaped upon me. There is only one other such place in the world.

I know quite a few bankers here and will get one of them to handle my little matter.

Just wanted to throw a little commission to you but now see how impossible it is and how troublesome to you.

Again thanking you, I am —.

Yours truly,

/s/ CHARLES F. PACE.